

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. the ) State Engineer, ) )	)	
)	)	69cv07941-BB-ACE
Plaintiff, ) )	)	Rio Chama Adjudication
v. ) )	)	
ROMAN ARAGON, et al., ) )	)	
Defendants. ) )	)	

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## **SCEDULING ORDER ON PUEBLO CLAIMS**

This scheduling order is entered by the Special Master pursuant to Order entered June 14, 2002, as amended August 30, 2004 [Docket Nos. 7470, 7572], Fed.R.Civ.P. 16(b) and the Court's April 21, 1994, *Order of Reference* to guide the course of litigation regarding the water rights claims filed by the United States on behalf of the Pueblo of San Juan and any water rights claims that may be filed by that Pueblo on its own behalf. Such water rights claims shall be designated collectively herein as "Pueblo Claims." In entering this Order, the Special Master is guided by concerns for judicial economy, efficiency, and resolution of this adjudication in as short a time as the complexities of this case, and the resources available to the parties, will allow. The purpose of this Order is to define and maintain a general framework within which the resolution of Pueblo Claims can be facilitated.

### **1. FINDINGS**

Having reviewed the history of these proceedings, including the preliminary statement of claims filed by the United States on behalf of the Pueblo of San Juan and the parties' recommendations concerning scheduling of these proceedings, I make the following findings:

- 1.1 The Pueblo of San Juan's motion to intervene in this case was granted on October 21, 1994.
- 1.2 On September 4, 1996, the Pueblo of San Juan filed a statement of its water rights claims [Docket No. 5474]. On March 4, 1997, the United States filed its preliminary statement of claims

[Docket No. 5612] for water rights based on all categories of uses -- past, present, and future -- by the Pueblo of San Juan.

1.3 The Pueblo's September 4, 1996 statement of claims and the United States' March 11, 1997 statement of claims asserted the Pueblo has water rights based on several different water uses and also based on different legal and/or evidentiary justifications. Specifically, and with respect to type of water use, the Pueblo and the United States have claimed rights based on both irrigation and non-irrigation (e.g., municipal and household) uses, and based on religious and ceremonial. With respect to legal or evidentiary justification, the Pueblo and the United States have asserted water rights based on documentation of past or present practices, and water rights based on an asserted entitlement to provide for the future needs of the Pueblo, including water rights based on the practicably irrigable acreage ("PIA") test adopted by the United States Supreme Court for the quantification of reserved rights recognized pursuant to Winters v. United States, 207 U.S. 564 (1908) and Arizona v. California, 373 U.S. 546, 600-601(1963).

1.4 Because of the diverse legal origins and evidentiary requirements of the various water rights claims asserted by the Pueblo and by the United States on behalf of the Pueblo, proceedings on the Pueblo Claims can be most effectively managed, within the letter and spirit of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the District of New Mexico, through formal subproceedings. Use of subproceedings promotes the orderly and fair disposition of the multiple issues raised by the Pueblo Claims, allows final disposition of some of the claims while work proceeds on others, and minimizes the financial burden to all parties litigating these claims.

Based on these findings, **IT IS HEREBY ORDERED:**

## **2. SUBPROCEEDINGS**

2.1 The specification herein of a sub proceeding to deal with a specified category of Pueblo Claims shall be without prejudice to the right of any party to assert and prove that there is, as a matter of law

or of fact, no entitlement on the part of the Pueblo to the uses of water that form the bases of the Pueblo Claims included within that subproceeding.

2.2 Litigation of Pueblo Claims shall be divided into the following named subproceedings:

**Pueblo Claims Subproceeding 1** shall consist of the adjudication of all claims to water rights on behalf of the Pueblo of San Juan based on evidence of specific past and present uses of water by the Pueblo; and

**Pueblo Claims Subproceeding 2** shall consist of the adjudication of all claims to water rights on behalf of the Pueblo of San Juan based on asserted legal rights to use water in addition to any quantities used historically.

2.3 Any party may, by motion, petition the Special Master to create additional subproceedings on Pueblo Claims. In addition, at any time prior to the commencement, pursuant to paragraph 3.2, infra, of a subproceeding created by this Order, a party may move to amend the definition herein of that subproceeding.

### **3. PROCEDURE IN SUBPROCEEDINGS**

**3.1 Preliminary Scheduling Order:** Except as provided in paragraph 3.8 herein with respect to emergency matters, no pleadings may be filed in a subproceeding until the Special Master has entered a preliminary scheduling order establishing deadlines for filing subproceeding complaints and answers thereto, and setting a scheduling conference pursuant to Fed. R. Civ. P. 16.

**3.2 Subproceeding Complaint:** A subproceeding shall be commenced by filing a subproceeding complaint, designated as such, with the Court.

**3.3 Form of Complaint:** A subproceeding complaint, and any document thereafter filed with the Court concerning that subproceeding, shall bear in its caption, beneath the civil action number of this case, the name of the subproceeding as designated by this Order or subsequent orders of the Special Master.

**3.4 Statement of Claim:** A subproceeding complaint shall contain a short and plain statement of each claim showing that the claimant is entitled to relief, and a demand for the relief the claimant seeks. No recitation of the grounds for the Court's jurisdiction is necessary.

**3.5 Rules of Procedure:** Except to the extent inconsistent with this Order, or other orders of the Court or the Special Master, a subproceeding complaint shall be deemed to be a "complaint" for purposes of application of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the District of New Mexico to the subproceeding, and said rules shall govern subproceedings to the same extent as any civil action.

**3.6 Parties:** A subproceeding complaint and any answer thereto shall be served pursuant to Fed.R.Civ.P. 5 upon all parties identified on the service list attached hereto, including any amendments thereto made by the Special Master from time to time. Thereafter, for purposes of Fed.R.Civ.P. 5, the "parties" to the subproceeding shall consist of persons who have filed in that subproceeding a subproceeding complaint or answer thereto and any person made a party to the specific subproceeding pursuant to Fed.R.Civ.P. 14 and 19 through 25.

**3.7 Binding Effect:** Orders entered in a subproceeding shall be binding on all parties to that subproceeding. Any judgment entered in a subproceeding shall be binding on all parties to that subproceeding and on any party to this case served with the subproceeding complaint for the subproceeding, whether or not that person has become a party to the subproceeding pursuant to paragraph 3.6.

**3.8 Emergency Matters:** Any party may seek determination of an emergency matter within the scope of a subproceeding in accordance with Fed.R.Civ.P. 65. If the subproceeding has not been previously commenced, the party seeking emergency relief shall commence the subproceeding by filing and serving a subproceeding complaint and therewith shall file and serve on all parties to this case a motion for temporary restraining order or preliminary injunction, which shall comply with and be decided in accordance with the Federal Rules of Civil Procedure and legal standards generally governing such motions.

**3.9 Additional Matters:** Except as specifically provided in Section 3 of this Order, this Order shall not alter or deprive the parties of any right to bring motions or other matters before this Court as provided in the Federal Rules of Civil Procedure.

## **4. SCHEDULE**

### **4.1 Preliminary scheduling order for Pueblo Claims Subproceeding 1:**

4.1.1 On or before March 30, 2007, the United States shall file and serve, pursuant to paragraph 3.6 of this Order, a subproceeding complaint stating the water rights to be claimed on behalf of The Pueblo of San Juan within the scope of Pueblo Claims Subproceeding 1, as defined in paragraph 2.2 of this Order.

4.1.2 On or before May 1, 2007, The Pueblo of San Juan shall file and serve, pursuant to paragraph 3.6 of this Order, a subproceeding complaint for water rights the Pueblo claims within the scope of Pueblo Claims Subproceeding 1.

4.1.3 Answers to all Pueblo Claims Subproceeding 1 complaints shall be filed on or before June 1, 2007.

4.1.4 On or before August 1, 2007, the parties to Pueblo Claims Subproceeding 1 shall meet pursuant to Fed.R.Civ.P. 26(f) and shall make mutual initial disclosures pursuant to Fed.R.Civ.P. 26(a)(1).

4.1.5 A scheduling conference for Pueblo Claims Subproceeding 1 shall be held before the Special Master in August, 2007, at a time and place to be announced. The United States, indicating concurrence or non-concurrence by other parties, shall submit a proposed scheduling order to the Special Master no later than 5 days before the scheduling conference.

**4.2 Preliminary scheduling order for Pueblo Claims Subproceeding 2:**

4.2.1 On or before March 31, 2010, the United States shall file and serve, pursuant to paragraph 3.6 of this Order, a subproceeding complaint stating the water rights to be claimed on behalf of The Pueblo of San Juan within the scope of Pueblo Claims Subproceeding 2, as defined in paragraph 2.2 of this Order.

4.2.2 On or before April 30, 2010, The Pueblo of San Juan shall file and serve, pursuant to paragraph 3.6 of this Order, a subproceeding complaint for water rights the Pueblo claims within the scope of Pueblo Claims Subproceeding 2.

4.2.3 Answers to all Pueblo Claims Subproceeding 2 complaints shall be filed on or before June 1, 2010.

4.2.4 On or before August 2, 2010, the parties to Pueblo Claims Subproceeding 2 shall meet pursuant to Fed.R.Civ.P. 26(f) and shall make mutual initial disclosures pursuant to Fed.R.Civ.P. 26(a)(1).

4.2.5 A scheduling conference for Pueblo Claims Subproceeding 2 shall be held before the Special Master in August, 2010, at a time and place to be announced. The United States, indicating concurrence or non-concurrence by other parties, shall submit a proposed scheduling order to the Special Master no later than 5 days before the scheduling conference.

**IT IS SO ORDERED.**

/electronic signature/  
SPECIAL MASTER VICKIE L. GABIN

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